



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on **November 5, 1999**

NOTICE OF ACTION TAKEN -- DOCKET OST 99-6370

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **DELTA AIR LINES, INC.,** filed **10/14/99** for:

XX Exemption for two years under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (i) Atlanta, Georgia, and Cozumel, Mexico and (ii) Phoenix, Arizona, and Mexico City, Mexico. Delta also seeks to combine this exemption authority with all of Delta's existing certificate and exemption authority, consistent with applicable international agreements.

Joint Application of **DELTA AIR LINES, INC. and AEROVIAS de MEXICO, S.A. de C.V.,** filed **10/14/99** for:

XX Statement of Authorization for Aeromexico under 14 CFR Part 212 to:

Display Delta's "DL" designator code on flights operated by Aeromexico between (i) Atlanta, Georgia and Cozumel, Mexico and (ii) Phoenix, Arizona and Mexico City, Mexico.¹

American filed an answer in opposition, arguing that the Department should not approve this application, or any other application for new or expanded codesharing, until it has acted favorably on the long-pending codesharing applications by American and Swissair, American and Sabena, and American and EVA Airways.

Delta and Aeromexico filed a joint reply, arguing that the objection provides no basis to delay approval of the Joint Applicants' request.

American filed a response, accompanied by a motion for leave to file, stating that in American's view there can be no justification for the Department to grant additional codesharing authority to Aeromexico, while the Department is in effect refusing to grant additional codesharing authority to Swissair, Sabena, and EVA Airways. American states that the Department should grant the new authority to Aeromexico only if it simultaneously approves American's codeshare arrangements with Swissair, Sabena, and EVA Airways.²

Applicant rep: **Robert E. Cohn (Delta) (202) 663-8060** DOT Analyst: **Linda L. Lundell (202) 366-2336**
William C. Evans (Aeromexico) (202) 371-6030

DISPOSITION

XX **Granted, subject to conditions, see below.**

The above action regarding Delta's exemption application was effective when taken: **November 5, 1999**, through **November 5, 2001**, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

The above action regarding Aeromexico's statement of authorization was effective when taken: **November 5, 1999**, and will remain in effect indefinitely, subject to the conditions described below.

(see next page)

¹ Aeromexico holds the necessary underlying authority to serve these markets. (See, Notice of Action Taken, dated February 24, 1999, in Docket OST-96-1304, and Notice of Action Taken, dated October 28, 1999, in Docket OST-99-6366.)

² On November 2, 1999, we granted American's code-share applications.

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

- XX Holder's certificate of public convenience and necessity (Delta)**
- XX Holder's Foreign Air Carrier Permit (Aeromexico) (Order 91-5-25)**
- XX Standard Exemption Conditions (attached)**

Conditions: The U.S.-Mexico exemption authority granted Delta is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our standard practice, the dormancy notice period will begin on Delta's proposed startup dates for these services, December 13, 1999 for Phoenix-Mexico City and December 18, 1999 for Atlanta-Cozumel, or the dates on which Delta institutes service in the Phoenix-Mexico City and/or Atlanta-Cozumel markets, whichever occurs earlier.

The Statement of Authorization granted Aeromexico is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as Delta and Aeromexico continue to hold the underlying authority authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (b) Delta and/or Aeromexico must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all of a portion of the approved code-share services.³ (Such notice should be filed in Docket OST-99-6370.)
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.
- (d) The authority granted here is specifically conditioned so that neither Delta nor Aeromexico shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/report_aviation.asp

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

APPENDIX A

U.S. CARRIER **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.